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16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE DISTRICT OF MONTANA**
18 **MISSOULA DIVISION**

19 UNITED STATES OF AMERICA,)
20 Plaintiff,))
21 vs.) No. CR 19-30-M-KLD
22)
23 BRYAN GREGG WATERFIELD NASH,) **TRANSCRIPT OF HEARING**
24 Defendant.) **ON MOTION TO CHANGE PLEA**
25 _____)

26 **BEFORE THE HONORABLE KATHLEEN L. DeSOTO**
27 **UNITED STATES DISTRICT COURT MAGISTRATE JUDGE**
28 **FOR THE DISTRICT OF MONTANA**

29 Russell Smith United States Courthouse
30 201 East Broadway
31 Missoula, Montana 59802
32 Thursday, May 7, 2020
33 2:02 to 2:45 pm
34
35

36 Proceedings recorded by digital audio recording
37 Transcript produced by computer-assisted transcription

APPEARANCES

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TRANSCRIBER'S NOTE: "Uh-huh" and "Um-hmm" indicate affirmative responses. "Huh-uh" and "Hm-umm" indicate negative responses.

1 PROCEEDINGS

2 (Open court.)

3 (Defendant present via video teleconference.)

4 THE CLERK: All rise. The United States District
5 Court for the District of Montana is now in session, the
6 Honorable Kathleen L. DeSoto presiding.

7 THE COURT: Please be seated.

8 (Discussion off the record between the Court and the
9 courtroom deputy clerk.)

10 THE COURT: All right. This is the time and place
11 set for a hearing on the motion to change plea in *United*
12 *States of America v. Bryan Gregg Waterfield Nash*. It's
13 CR 19-30-M-DWM.

14 Good afternoon, Mr. Nash.

15 THE DEFENDANT: Good afternoon, Your Honor.

16 THE COURT: Can you hear me okay?

17 THE DEFENDANT: I can. Thank you.

18 THE COURT: Okay. And are you able to see me, too,
19 or is it just audio for you?

20 THE DEFENDANT: I can see you. You're distant, but
21 I can see you.

22 THE COURT: Okay. Well, that's okay.

23 All right. So my understanding of what we're doing
24 here today, Mr. Nash, is there has been a superseding
25 information filed in your case that charges you with violating

1 Title 18, United States Code, Section 873. And what you'd
2 like to do today here -- which is a Class A misdemeanor. And
3 what you'd like to do today here is plead guilty to this
4 superseding information in front of me; is that correct?

5 THE DEFENDANT: Yeah, that's correct, Your Honor.

6 THE COURT: Okay. And so I have here on the bench a
7 Consent to Proceed before a Magistrate Judge in a Misdemeanor
8 Case basically setting out that you consent to that and you
9 waive your rights to have this change of plea hearing as well
10 as sentencing conducted by an Article III, a district court
11 judge, and you agree to proceed before me today. Is that
12 true? Is that accurate?

13 THE DEFENDANT: That's correct, Your Honor.

14 THE COURT: Okay. And then that signature that's
15 right under the, under the paragraphs stating what you're
16 waiving, is that your signature?

17 THE DEFENDANT: That is my signature.

18 THE COURT: Okay. And then that has been consented
19 to as well by your attorney and by the government. Okay?

20 THE DEFENDANT: Okay.

21 THE COURT: All right. So generally, you know, we
22 would be doing this in person, but I think for you we've been
23 doing everything by video anyways, but I do want to go ahead
24 and get on the record that you consent to do this appearance
25 by video. I know you asked for that, but I want to have that

1 formally in the record.

2 So do you agree to conduct this change of plea
3 hearing by video?

4 THE DEFENDANT: I do, and thank you.

5 THE COURT: Absolutely.

6 All right. So, Mr. Rhodes, are you ready to
7 proceed?

8 MR. RHODES: Yes, Your Honor. Thank you.

9 THE COURT: And, Mr. Weldon, are you as well?

10 MR. WELDON: Yes, Your Honor. Thank you.

11 THE COURT: Okay.

12 So what I'm going to do now, Mr. Nash, is have you
13 raise your right hand, and the clerk will administer the oath
14 and place you under oath. Okay?

15 THE DEFENDANT: Okay.

16 (Oath administered to the defendant.)

17 THE COURT: All right. So, Mr. Nash, as we just
18 discussed, the purpose of this hearing today is really to
19 enter a guilty plea for you on the superseding information,
20 but to do that I have to be convinced that your guilty plea is
21 entirely voluntary and that it's being made on an informed
22 basis. And so to do that I must be convinced that you
23 understand the nature of this charge that's contained in the
24 superseding information, the consequence that you face by
25 pleading guilty, the potential penalties that you face, as

1 well as the rights that you are waiving. And I also must be
2 satisfied that the government could prove that charge of
3 blackmail against you, and the level of proof that they would
4 have to satisfy is beyond a reasonable doubt.

5 So that's the purpose of the hearing here today. Do
6 you have any questions about what we're doing?

7 THE DEFENDANT: Not yet. Thank you, Your Honor.

8 THE COURT: Okay. And that's -- and I guess that's
9 one thing I should say. It's a little weird when you're here
10 by video as opposed to in person, but if at any time you have
11 a question, you can feel free to stop and ask me. It may be
12 something that you want to discuss with your attorney outside
13 of our presence, and we can certainly arrange for that as
14 well. I just want to make sure you feel comfortable going
15 forward. Okay?

16 THE DEFENDANT: Okay. Thank you, Your Honor.

17 THE COURT: All right. So I need to ask you some
18 background questions, and the point of these questions isn't
19 to pry unnecessarily into your personal life and
20 circumstances, but it's so that I have a sense of who you are
21 so that I can be confident that when I'm deciding whether your
22 change of plea -- or your plea, I guess I should say, is
23 informed and voluntary, that I have a basis to make that
24 decision.

25 So let me start first with how old you are.

1 THE DEFENDANT: I am 56 years old.

2 THE COURT: Okay. And you are currently married; is
3 that correct?

4 THE DEFENDANT: That is correct.

5 THE COURT: And how many children do you have?

6 THE DEFENDANT: Five.

7 THE COURT: And do all five of those kids live with
8 you?

9 THE DEFENDANT: Some of the time all five are
10 together. Not always.

11 THE COURT: Okay. Let me ask you a different way.
12 Are you financially responsible for all five of the kids?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. And what is the age range of
15 those children?

16 THE DEFENDANT: Ten to 23.

17 THE COURT: Okay. And you're currently employed; is
18 that right?

19 THE DEFENDANT: I am.

20 THE COURT: And what exactly do you do?

21 THE DEFENDANT: I'm head of strategy for a publicly
22 traded Fortune 1000 company.

23 THE COURT: Okay. And how long have you been with
24 that company?

25 THE DEFENDANT: Five years.

1 THE COURT: Have you -- and I know this was a
2 question before that, Mr. Rhodes, you might want to jump in
3 on, but have you ever been treated for mental health -- mental
4 illness, mental -- any kind of mental health issues?

5 Is he okay to answer, John?

6 MR. RHODES: Yes, Your Honor.

7 THE COURT: Okay.

8 THE DEFENDANT: I have, Your Honor.

9 THE COURT: Okay. So can you briefly describe for
10 me what that is, what treatment you've received?

11 THE DEFENDANT: Yes. Bipolar depression.

12 THE COURT: And are you currently medicated for your
13 bipolar depression?

14 THE DEFENDANT: I am.

15 THE COURT: And what, what medications do you take?

16 THE DEFENDANT: Fluoxetine, Zyprexa, and I'm going
17 to be starting a new medication, BuSpar.

18 THE COURT: All right. And are the two that you're
19 already are -- or currently on, I guess I should say, are
20 those medications that you take every day?

21 THE DEFENDANT: They are, Your Honor.

22 THE COURT: And have you taken them today?

23 THE DEFENDANT: I have taken them today.

24 THE COURT: And so is there anything about those
25 medications or your reactions to those medications that

1 interferes with your ability to understand and process what
2 we're doing here today?

3 THE DEFENDANT: No, Your Honor. I believe it helps
4 improve my ability to process what we're doing today.

5 THE COURT: All right. Other than those
6 medications, are you under the influence of any alcohol or any
7 other type of medication or narcotic?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Okay. Do you have a copy -- I know
10 you're sitting in your car, it looks like, but do you have a
11 copy of the superseding information there with you?

12 THE DEFENDANT: I have a copy of the proof, Offer of
13 Proof in Support of Guilty Plea.

14 THE COURT: All right. And we'll get to that in
15 just a second. Let's talk about the superseding information
16 first.

17 So you're charged in the superseding information
18 with violating Title 18, United States Code, Section 873.
19 That's blackmail. And the maximum penalty for that charge,
20 which is a Class A misdemeanor, is one year imprisonment -- up
21 to one year imprisonment, a \$100,000 fine, and one year of
22 supervised release. And then there's also a \$25 special
23 assessment that comes into play at the time of sentencing.

24 Do you have any questions about the maximum
25 penalties that you face to the charge of blackmail as

1 contained in the superseding information?

2 THE DEFENDANT: No, Your Honor. I understand the
3 maximum penalties.

4 THE COURT: Okay. And it's my understanding -- I'll
5 talk about this a little bit more in detail later, but it's my
6 understanding that part of this plea agreement envisions, at
7 the time of sentencing, the United States moving to dismiss
8 both the indictment, the original indictment, as well as the
9 superseding indictment. Is that your understanding as well?

10 THE DEFENDANT: That is my understanding,
11 Your Honor.

12 THE COURT: Okay. So have you had the chance to
13 discuss this case with Mr. Rhodes? And by that I mean all the
14 facts that the government would have to prove in order to get
15 a guilty conviction in your case?

16 THE DEFENDANT: I have had meetings with my
17 attorney, Mr. Rhodes, several times discussing those points.

18 THE COURT: All right. And have you had a chance to
19 discuss all the evidence the government has or problems with
20 the evidence that your attorney might think the government has
21 in proving their case against you?

22 THE DEFENDANT: Yes, we've discussed both those.

23 THE COURT: Have you had sufficient time to meet
24 with Mr. Rhodes to discuss all the options in your case?

25 THE DEFENDANT: I have, Your Honor.

1 THE COURT: And so generally what happens is after
2 somebody gets charged, there's an exchange of information from
3 the government to the defendant, and we call that discovery.
4 And it can be reports. It can be cell phone information. It
5 can be texts. It can be emails, computer printouts. All
6 kinds of things. Usually -- I understand this case is
7 probably fairly document-intensive. Were you able to review
8 the discovery or a summary of the discovery with Mr. Rhodes
9 prior to today?

10 THE DEFENDANT: Yes, we did review much of the
11 government discovery.

12 THE COURT: And so if you had any questions, either
13 about any aspect of the charges that were contained in either
14 of the indictments or any of the facts that were contained in
15 the discovery, were you able to ask those questions of
16 Mr. Rhodes?

17 THE DEFENDANT: Yeah, to the best of my ability, I
18 was.

19 THE COURT: All right. So when you say to the best
20 of your ability, was there something that interfered with your
21 ability to ask him questions?

22 THE DEFENDANT: Well, sometimes I didn't understand
23 what questions to ask, and so I didn't know what to ask, not
24 being familiar with the legal system.

25 THE COURT: Sure. Absolutely. And so -- and as you

1 kind of went, went through this case and kind of worked your
2 way through it, were you able to kind of, you know, identify
3 issues, maybe, or speak about issues that you had with
4 Mr. Rhodes?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And so as you sit here today, do you
7 feel confident that you have a good understanding of the facts
8 in the case and any of the legal issues that you wanted to
9 discuss? Do you feel like you have a good understanding of
10 that?

11 THE DEFENDANT: I do, Your Honor.

12 THE COURT: All right. And are you satisfied with
13 the representation that Mr. Rhodes has given you?

14 THE DEFENDANT: I am, Your Honor.

15 THE COURT: Okay. Thank you.

16 And as we sit here today, do you need any additional
17 time to talk about anything with Mr. Rhodes before we proceed
18 in this hearing?

19 THE DEFENDANT: Not at this point, Your Honor.
20 Thank you.

21 THE COURT: Okay. And like I said, if you ever have
22 a need to do that, just let me know and we can arrange for
23 that. Okay?

24 THE DEFENDANT: Okay. Thank you.

25 THE COURT: All right. So we just talked about the

1 maximum penalties, and I don't even know if this applies in
2 your case, but there's no parole in the federal system. So if
3 you were, if you were to be sentenced to a period of
4 incarceration, that's the sentence that you would generally
5 serve. I don't think that's probably a huge issue in this
6 case, but I need to advise you of that.

7 Have you discussed with your attorney what
8 supervised release is?

9 THE DEFENDANT: Yes, I have, Your Honor.

10 THE COURT: So tell me what you understand it to be.

11 THE DEFENDANT: That I will be working with a
12 probation officer on a regular cadence, checking in and
13 providing information at their request.

14 THE COURT: Yeah, that's basically it. And I know
15 that in the plea agreement there's an agreement by the parties
16 that a recommended sentence would be five years of probation.
17 And to, to a large degree, probation and supervised release
18 are the same thing. The only distinction is that supervised
19 release occurs if you were to receive any sort of jail time.
20 Supervised release, that's the period of time that's -- that
21 you're under supervision afterwards.

22 But the way you described it is how probation works.
23 And if you were to receive a probationary sentence in this
24 case, you would be required to work with the probation office
25 in the district in which you were located at the time, and

1 there would be some conditions that you would have to abide
2 by, including, you know, not violating any additional laws.
3 If there was any financial information or additional,
4 additional conditions that the probation office felt was
5 necessary, they would impose those con- -- I would impose
6 those conditions at the time of sentencing, and then you would
7 be required to abide by those conditions for the term of your
8 probation. Do you understand that?

9 THE DEFENDANT: I understand that, Your Honor.

10 THE COURT: Okay. And then, of course, there are
11 consequences if you violate those terms of condition -- those
12 conditions. And what could happen is you could be brought
13 back before the Court and, if you had been sentenced to a
14 probationary sentence, you could then be sentenced to a term
15 of incarceration. Do you understand how that would work?

16 THE DEFENDANT: I understand that, Your Honor.

17 THE COURT: Okay. Do you have a copy of the plea
18 agreement there with you?

19 THE DEFENDANT: I do not have a paper copy of the
20 plea agreement.

21 THE COURT: Okay. Well, so, that complicates it a
22 little bit but not too much. I think I can work my way
23 through this with you. And if you have a question about
24 something, I can certainly read it out loud to you. Okay?
25 Not the whole plea agreement, but if there's a question about

1 a provision in the plea agreement that we're talking about, I
2 can certainly read it out loud to you, and that would help.
3 All right?

4 THE DEFENDANT: Okay. Thank you, Your Honor.

5 THE COURT: Okay. So just for the record, the plea
6 agreement that I have is eight pages long. There are, at the,
7 at the eighth page, or on the eighth page, there are a series
8 of lines for signatures. It's signed by Timothy Racicot for
9 the United States attorney, it's signed by you, and then it's
10 signed by your counsel John Rhodes.

11 However, there is -- you omitted the date on that
12 signature, but is it fair for me to presume that you signed it
13 on or before approximately March 26, 2020?

14 THE DEFENDANT: That would be correct, Your Honor.

15 THE COURT: Okay. And then on the left-hand side --
16 or, I'm sorry, on the left-hand bottom corner of each page
17 there are a series of lines with initials over them, including
18 for the United States -- assistant United States attorney,
19 yourself, and your attorney. And it looks like you signed all
20 of them except for -- or initialed all of them except for the
21 final page. But is it fair for me to assume that you meant to
22 initial the final page?

23 THE DEFENDANT: Your Honor, I did mean to sign all
24 pages and date it.

25 THE COURT: Okay. And then so what did you intend

1 to signify by initialing each of the pages?

2 THE DEFENDANT: That I was in agreement to the
3 document and each of the pages.

4 THE COURT: Okay. Did you intend to let me know
5 that you had read and understood all of the pages in the plea
6 agreement?

7 THE DEFENDANT: I did understand it, and I did read
8 all of the pages in the plea agreement, yes, Your Honor.

9 THE COURT: Okay. And so does this agreement that I
10 have that you signed, is it the entire agreement that you have
11 with the United States?

12 THE DEFENDANT: To the best of my knowledge, that,
13 that would encompass the agreement --

14 THE COURT: Okay.

15 THE DEFENDANT: -- the final plea agreement.

16 THE COURT: Okay. And so what I mean by that is
17 there's no side deals or something that's not written down
18 that you expect to get in exchange for this guilty plea,
19 right?

20 THE DEFENDANT: No, there are none that I'm aware
21 of.

22 THE COURT: All right.

23 So, Mr. Weldon, would you please outline the
24 essential terms of this agreement?

25 MR. WELDON: Yes, Your Honor.

1 In this case, the defendant will be pleading guilty
2 to the sole count in the superseding information. The plea
3 agreement was negotiated under 11(c)(1)(A) and (B). And for
4 the benefit of the defendant, that means that the United
5 States will dismiss both the original indictment as well as
6 the superseding indictment, and, in exchange, we will also
7 make some recommendations. Those recommendations, Your Honor,
8 are contained in paragraph 6, and it's the standard 2 levels
9 for acceptance of responsibility, so long as there isn't
10 anything inconsistent with acceptance of responsibility, and
11 an additional 1 level if appropriate under the guidelines.

12 And then this agreement is a little different in
13 that the parties are jointly agreeing to recommend a sentence
14 of probation for five years. The parties do reserve the right
15 to make any other arguments at the time of sentencing, and the
16 defendant understands that the Court is not bound by those
17 recommendations. There also is a general waiver of appeal in
18 this plea agreement, Your Honor.

19 THE COURT: Okay.

20 And, Mr. Rhodes, do you agree that that describes
21 the essential terms of this agreement?

22 MR. RHODES: Yes, Your Honor.

23 THE COURT: And, Mr. Weldon, I'm sorry. I meant to
24 ask you as well: Is this the most favorable agreement that
25 was sent to the plaintiff -- the "plaintiff" -- the

1 defendant --

2 MR. WELDON: Yes, Your Honor.

3 THE COURT: -- in writing?

4 MR. WELDON: In this case, this was by far the most
5 favorable agreement.

6 THE COURT: And, Mr. Rhodes, I'm assuming you agree
7 with that?

8 MR. RHODES: Yes, Your Honor.

9 THE COURT: Okay. So, Mr. Nash, has anyone made any
10 promises to you that are not contained in the four corners of
11 this agreement in an effort to get you to take it?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Has anyone threatened you or your family
14 or coerced you in an effort to get you to take this plea
15 agreement?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: So I want to talk about a couple of the
18 provisions. The first one that Mr. Weldon just mentioned
19 is -- we call it the nature of the agreement, and basically it
20 just sets out which rules of criminal procedure apply to this
21 agreement. And as Mr. Weldon noted, this plea agreement is
22 governed by 11(c)(1)(A) and 11(c)(1)(B) of the rules of
23 criminal procedure.

24 And what that essentially means is that if the
25 government, as it has agreed to do, moves to dismiss the

1 original indictment and the superseding indictment and then
2 makes those recommendations about the guideline levels that he
3 mentioned as well -- and we'll talk about those in a second --
4 if all of that happens and the Court agrees to dismiss the
5 original and superseding indictment, you won't have the
6 ability to withdraw from this plea agreement, even if it turns
7 out in a way that you don't want. Do you understand that?

8 THE DEFENDANT: I do, Your Honor.

9 THE COURT: Okay. And the recommendations that the
10 government has agreed to make, those are contained in
11 paragraph 6, and it's that the United States will recommend a
12 downward -- well, a decrease, I guess, by 2 levels for the
13 acceptance of responsibility, an additional 1 under certain
14 circumstances if it was applicable. But I think probably the
15 recommendation that means the most to you is that the parties
16 agree jointly to recommend a sentence of probation for five
17 years.

18 But do you understand that if for some reason the
19 Court did not agree to go along with that recommendation and
20 you were sentenced to a period of incarceration, that you
21 wouldn't have the ability to withdraw from this plea
22 agreement?

23 THE DEFENDANT: I do, Your Honor.

24 THE COURT: Okay. I want to talk to you now about
25 the constitutional rights that you're going to be waiving by

1 choosing to plead guilty. You generally have the right to go
2 to trial by jury, but by virtue of this waiver that you
3 signed, you have waived that right. So what you would be
4 entitled to is to go to a trial in front of me, the judge, and
5 what would happen if you wanted to go to trial in this matter
6 is the United States would go first. It bears the burden of
7 proof. And the United States would present witnesses that
8 would come forward, provide testimony. They would admit
9 evidence.

10 Your attorney on your behalf would have the ability
11 to cross-examine all of those witnesses and challenge all of
12 that evidence. Then your attorney would have the chance to
13 go, and he could present witnesses and evidence on your
14 behalf. If the witnesses you wanted to have show up to trial
15 would not voluntarily come here, your attorney could ask the
16 Court to issue subpoenas, which we would do, and then those
17 subpoenas would go out, the United States marshal would get
18 those witnesses, and they would bring them in here to testify.
19 So your attorney could put on those witnesses and present
20 evidence. Of course, the United States would have the right
21 to challenge the evidence and cross-examine those witnesses.

22 You, yourself, would also have the right to testify
23 at trial if you wanted to do that, but you also have the
24 absolute right to not testify at trial. And if you chose to
25 remain silent and not testify at trial, the Court would

1 instruct -- well, I guess I would understand that your
2 decision to not testify could not be held against you. And so
3 what that means is that if you chose to not testify, I could
4 not and would not consider that in any way, shape, or form
5 when determining if you were guilty or innocent.

6 So if you went to trial, you would be presumed
7 innocent as a matter of law. I would understand that the
8 charge against you must be proven by the government and that
9 the government would have to establish guilt beyond a
10 reasonable doubt. And then if you were convicted, you would
11 have the right to appeal that conviction.

12 You also, of course, as we talked about earlier,
13 would have the right to have the District Court conduct this
14 change of plea hearing, but you have waived that right as
15 well.

16 Do you understand those rights?

17 THE DEFENDANT: I do, Your Honor.

18 THE COURT: Do you have any question about that?

19 THE DEFENDANT: Not at this time, Your Honor.

20 THE COURT: Okay. So we've already talked about
21 that there's no parole. I don't think that's really
22 applicable in this case, but I want to talk to you for a
23 moment about the sentencing procedure. And I'm sure
24 Mr. Rhodes has discussed that with you.

25 But essentially sentencing in the federal court is

1 governed by a statute. It's 18 United States Code
2 Section 3553(a). And what it requires the Court to do is
3 fashion a sentence that is sufficient but no greater than
4 necessary, and there's a whole list of factors that the Court
5 will consider, and that includes your background, the nature
6 of the crime, any applicable policy statements.

7 But one of the things that the Court must consider
8 is the United States Sentencing Guidelines. It used to be
9 that those guidelines were mandatory, and now they're
10 advisory, but the Court is still required to first calculate
11 them accurately and then, second, consider them when putting
12 together a sentence that is sufficient but no greater than
13 necessary.

14 So have you had the chance to talk to Mr. Rhodes
15 about the sentencing guidelines and how they work?

16 THE DEFENDANT: I have, Your Honor.

17 THE COURT: So tell me what -- tell me your
18 understanding of how the guidelines work.

19 THE DEFENDANT: My understanding is that the
20 recommendation in the plea agreement is simply a
21 recommendation by both parties and that the judge, you, would
22 make the determination as to what the ruling would be on the
23 sentencing.

24 THE COURT: I think that's true mechanically, but
25 the sentencing guidelines in particular are -- it's a system

1 that the Court has to consider, and it's one of the factors
2 that the Court considers. But what it is is basically for the
3 federal crimes that exist for all the statutes, there's a
4 corresponding guideline, and so there's different ones for
5 different statutes and so forth. And that is -- it correlates
6 to a number, okay, your offense level. And there are certain
7 things that can make that go up or down.

8 I did look up the guideline in this particular case,
9 and I think, like a lot of, a lot of charges that are similar
10 to this, it is affected to some degree at least by the amount
11 involved. And I don't know what that amount is, but that,
12 that can make the number go up. Then there's a series of
13 other things that can and might make the number go up or down
14 even more. It's different in every single case.

15 But after all of those calculations, what you have
16 is an adjusted offense level. And if you look at -- have you
17 ever seen the sentencing chart, the guideline chart?

18 THE DEFENDANT: I did some time ago.

19 THE COURT: Sure.

20 THE DEFENDANT: The different quadrants, yeah.

21 THE COURT: Exactly. And so what you have is a
22 series of numbers on the left, and those are the offense
23 levels. And on top are Roman numerals, and those represent
24 your criminal history. And the way that's calculated is the
25 probation office will look at -- or get information relating

1 to all of your contacts with law enforcement. Some things are
2 scored and some things are not scored. At the end of all that
3 information-gathering, you have a number that corresponds to a
4 criminal history category, and then where the criminal history
5 category and your adjusted offense level, where those two
6 things meet up, that is your guideline range, and it's
7 expressed in months, and so those are the numbers that make up
8 those quadrants.

9 Do you have any question about how that works?

10 THE DEFENDANT: Well, in theory I understand how it
11 works, but there's, you know, a great deal of detail that goes
12 into it that I'm not familiar.

13 THE COURT: I think pretty much everyone in the room
14 would say that. Every time --

15 THE DEFENDANT: Yeah.

16 THE COURT: Every time when I, when I was on the
17 other side of this, whenever I would be trying to calculate
18 guidelines for a client, I would always have to say, "You
19 know, this is my best guess," because there's a lot of moving
20 parts in these and things go up or down. And as we sit here
21 right now, I think probably none of us has a completely
22 accurate, a hundred percent accurate view of that.

23 But I'm gonna ask your lawyer right now if he's had
24 the chance to calculate a preliminary guideline estimate.
25 Okay?

1 THE DEFENDANT: Okay. Thank you, Your Honor.

2 THE COURT: Mr. Rhodes.

3 MR. RHODES: Yes, Your Honor.

4 As you referenced, the intended loss is referenced
5 in 2B1.1, and, here, I wouldn't be surprised if the intended
6 loss comes out into the millions of dollars. The bottom line
7 is no money was exchanged, however.

8 THE COURT: Okay.

9 MR. RHODES: So I think what's gonna happen with the
10 guidelines is they're gonna top out at the statutory maximum.
11 And we're gonna argue that the guidelines are anomalous
12 because they could be based on intended loss when, in reality,
13 there was no money exchanged.

14 THE COURT: Okay.

15 So as you can tell -- could you hear? Could you
16 hear Mr. Rhodes okay?

17 THE DEFENDANT: I could, Your Honor.

18 THE COURT: Okay. So as you could tell, there might
19 be some dispute about how that's calculated, an intended loss
20 versus actual loss making an issue. So what Mr. Rhodes has
21 done is kind of give, give -- I'm sure he gave this to you
22 before and he just certainly just gave to me -- sort of the
23 best guess of where we're going to end up at the time of
24 sentencing. But do you have any questions about how that, how
25 the process works? Maybe not how exactly we get there but the

1 basic process of how guidelines work within the sentencing
2 grid?

3 THE DEFENDANT: Yeah. I have a basic understanding.
4 I wouldn't say I have a competency understanding.

5 THE COURT: And I, honestly, I wouldn't expect you
6 to. I think basic is good enough for now. Okay?

7 Uh-oh.

8 THE CLERK: Uh-oh.

9 (Pause.)

10 THE DEFENDANT: Okay. Are you still there?

11 THE COURT: Well, I can hear you. I can't see you.
12 But can you hear me?

13 THE DEFENDANT: I can hear you and see you.

14 THE COURT: Oh. Okay.

15 Well, Mr. Rhodes, are you okay going forward with me
16 not being able to see him?

17 MR. RHODES: Yes, Your Honor, as long as Mr. Nash
18 is.

19 THE COURT: Okay.

20 So, Mr. Nash, I can hear you --

21 THE DEFENDANT: Yeah.

22 THE COURT: -- just fine, but I can't see you at
23 all. Are you comfortable proceeding right now with, with
24 this, just with audio as opposed to with me not being able to
25 see your face?

1 THE DEFENDANT: I am comfortable as long as I can
2 hear you, Your Honor, correct.

3 THE COURT: Okay.

4 Mr. Weldon, are you okay with that as well?

5 MR. WELDON: Yes, Your Honor. Thank you.

6 THE COURT: Okay.

7 All right. So at this point, Mr. Weldon, would you
8 please explain the legal elements of the offense?

9 MR. WELDON: Yes, Your Honor.

10 There are two elements in this offense:

11 First, the defendant knowingly demanded or received
12 a thing of value; and

13 Second, he did so under a threat of informing, or as
14 consideration for not informing, against a violation of a law
15 of the United States.

16 THE COURT: All right.

17 Mr. Rhodes, do you agree that's a correct statement
18 of the legal offense?

19 MR. RHODES: Yes, Your Honor.

20 THE COURT: Or the elements. I'm sorry.

21 Okay. So, Mr. Nash, there has been an offer of
22 proof in this case, and all an offer of proof is really is a
23 summary of the evidence the United States believes it could
24 show if it went to trial in this case. And so I think you
25 referenced earlier that you have that with you?

1 THE DEFENDANT: I do, Your Honor.

2 THE COURT: Okay. And have you had a chance to
3 review that with Mr. Rhodes?

4 THE DEFENDANT: I did --

5 THE COURT: Okay.

6 THE DEFENDANT: -- Your Honor.

7 THE COURT: So, Mr. Weldon, would you please
8 describe the proof the government would present if it had to
9 go to trial on this count?

10 MR. WELDON: Yes, Your Honor.

11 If this case proceeded to trial, the United States
12 would prove that Mr. Nash has known the victim in this case,
13 John Doe 1, for many years.

14 Beginning in approximately December of 2013 and
15 continuing until approximately June of 2019, Mr. Nash
16 frequently communicated with John Doe 1 in person and
17 electronically by sending email and text messages and with
18 family, friends, and colleagues of John Doe 1.

19 Many of Mr. Nash's communications demanded money
20 from John Doe 1, and he also accused John Doe 1 of committing
21 federal crimes; specifically, Mr. Nash alleged John Doe 1
22 could be investigated by the IRS for tax fraud. For example,
23 Mr. Nash sent a text message to John Doe 1 on March 15, 2016
24 stating, quote, You have IRS exposure, too, end quote.

25 Mr. Nash sent another text message in April of 2016

1 telling John Doe 1, quote, This brings all your IRS stuff to
2 the public eye even more. This will be huge news. You were
3 scamming the IRS, end quote.

4 During the same time period Mr. Nash was accusing
5 John Doe 1 of breaking federal law, he also repeatedly asked
6 for financial assistance. When John Doe 1 stopped responding
7 to communications from Mr. Nash, Mr. Nash intensified
8 communications with John Doe 1's friends, family members,
9 employees, and privately retained lawyers. Many of those
10 messages referenced John Doe 1 being investigated by the IRS
11 or FBI, and Mr. Nash repeatedly asked to meet with John
12 Doe 1's lawyers in order to, quote, settle, end quote, with
13 John Doe 1. Mr. Nash's requests to settle with John Doe 1
14 were in consideration for not filing a civil complaint against
15 John Doe 1 or reporting his alleged criminal transgressions to
16 law enforcement.

17 If this case proceeded to trial, Your Honor, that
18 would be the evidence the United States would offer.

19 THE COURT: All right.

20 So, Mr. Nash, were you able to hear everything
21 Mr. Weldon just said?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And do you disagree with anything that
24 he said?

25 THE DEFENDANT: The general nature of what he said

1 is true. The IRS piece was in the newspaper already, related
2 to the lawsuit that John Doe was involved with. That had
3 already become public. So there's, there's some things on
4 here that were, were public already.

5 THE COURT: Okay. So, so I guess what I'd like to
6 hear from you is an explanation of why you think you're guilty
7 of the charge to which you're pleading guilty here today. So
8 even though -- I mean, I guess what I'm hearing is that maybe
9 you have some quibble with when some of the IRS information
10 was made public, but I need to hear from you that you
11 understand that you are, in fact, guilty and what facts you
12 believe support your guilty plea.

13 THE DEFENDANT: Okay, Your Honor.

14 This is a very long, protracted situation going back
15 to 2007, possibly. I believed my life was in danger. I was
16 very fearful of John Doe and the threats, credible threats,
17 and the people that had contacted me and told me that he
18 wanted to kill me. I was afraid of that.

19 I, I was very anxious. I tried to communicate with
20 John Doe's attorneys. I started demanding that he leave me
21 alone and that he pay me money that I believed he owed me.

22 At the time, I didn't realize that was blackmail and
23 that I was breaking the law. I just wanted him to pay me what
24 I believed he owed me and to leave me alone.

25 THE COURT: Okay. So let me ask you this: Do you

1 understand now that what you did is blackmail under the law?

2 THE DEFENDANT: I do, Your Honor.

3 THE COURT: Okay. And so when -- although at the
4 time you may not have known it was a violation of the law, did
5 you, did you, when you demanded this money, did you do so with
6 a threat to basically inform or tell on John Doe 1 for what
7 you believed was a violation of federal law?

8 THE DEFENDANT: Yes, Your Honor. I, I told him that
9 I wanted him to leave me alone and that I was going to contact
10 the authorities, which I did, and I told him I was going to do
11 that if he didn't leave me alone and pay me what he owed me.

12 THE COURT: Mr. Rhodes.

13 MR. RHODES: Your Honor, I think that satisfies the
14 elements.

15 THE COURT: Okay.

16 MR. RHODES: It's admitting that he demanded money
17 under the threat of reporting John Doe if he didn't receive
18 the money.

19 THE COURT: Okay. All right.

20 Okay. So, Mr. Nash, based on the discussions that
21 we've had here today, I'm going to ask you now: How do you
22 plead to the sole count of the superseding information?

23 THE DEFENDANT: Guilty, Your Honor.

24 THE COURT: All right.

25 I find that you are fully competent and capable of

1 entering an informed and voluntary plea, that you understand
2 the nature of the charge to which you have just pled guilty,
3 that you understand the consequences of pleading guilty here
4 today as well as the maximum punishment that you may face for
5 pleading guilty here today. I find that you fully understand
6 the constitutional rights that you are waiving here by
7 pleading guilty here today. I find that you have had adequate
8 time to review the plea agreement with your attorney,
9 Mr. Rhodes, that you understand all of the provisions of the
10 plea agreement, and that all of the statements in the plea
11 agreement are true.

12 I find that your guilty plea is knowing and
13 voluntary, supported by an independent basis in fact which
14 would establish each of the essential elements of the crime.
15 And I also find that if I sat through a trial and listened to
16 the evidence that Mr. Weldon said that he could prove, that I
17 would find you guilty beyond a reasonable doubt.

18 And so for those reasons, I will accept your guilty
19 plea.

20 Sentencing. We alluded to it a little bit, but
21 basically the way sentencing works unless -- and I'd like to
22 hear from the parties on this. Generally how sentencing would
23 work is there would be a full-blown presentence investigation
24 which results in a presentence investigation report which
25 comes to the Court, and at that time sentencing occurs.

1 John and Ryan, have you spoken about what you would
2 like to do?

3 (Discussion off the record.)

4 MR. RHODES: Can I confer with Mr. Weldon,
5 Your Honor?

6 THE COURT: Certainly.

7 (Discussion off the record.)

8 MR. WELDON: Your Honor, I think that we're fine
9 working with the probation office. We want to make sure -- I
10 think the one issue that we're most concerned about from the
11 government's perspective is the mental health history of the
12 defendant.

13 THE COURT: Okay.

14 MR. WELDON: We just want to make sure that we have
15 that cataloged and we can address any concerns.

16 THE COURT: All right. So do you have a --

17 MR. RHODES: Your Honor, I think not doing a
18 full-blown PSR would fit the situation, but I understand
19 Mr. Weldon's concern. So if there was a way to do a lesser
20 PSR but have the mental health concerns addressed in it, that
21 would be our request.

22 THE COURT: I think, from speaking with Mr. Hogan
23 earlier, I don't think that that would -- so, so the two
24 options that I would have are, you know, having the
25 presentence report done without the background, which is a

1 much shorter timeline, obviously. My understanding from
2 talking to Mr. Hogan -- and, Brian, you can maybe tell me if
3 I'm wrong -- that if we're going to do the background, even
4 the mental health, we would need the time to go forward as if
5 it was a full-blown PSR, so I would probably just go ahead and
6 order the full-blown PSR.

7 PROBATION OFFICER HOGAN: Correct, Your Honor. The
8 problem that lies within is the collateral requests for
9 records.

10 THE COURT: Take time.

11 PROBATION OFFICER HOGAN: Those take time.

12 THE COURT: Yeah.

13 PROBATION OFFICER HOGAN: So we would request the
14 full time period for this.

15 THE COURT: Okay.

16 All right. So, Mr. Nash, let me explain to you
17 what's gonna happen. There will be a presentence
18 investigation. And what happens is Mr. Hogan, who is the
19 presentence report-writer in your particular case, will
20 contact you, and that will be arranged through your attorney.
21 And obviously because of how we are doing things now and also
22 with you in California, I presume that will be either by phone
23 or by video.

24 But there will be an interview. You are required to
25 be honest and truthful during that interview, but you do need

1 to know that you have the absolute right to have your attorney
2 present with you during that entire interview process. And if
3 there's any time, just like today, if there's any time where
4 you feel like you need to talk to your attorney outside the
5 presence of the probation officer, you can certainly just say,
6 "Hey, I need a second," and then you and John can go and talk
7 about what you need to talk about.

8 But basically what will happen is he will ask you a
9 whole series of questions. There are some forms you're gonna
10 have to fill out, releases that Mr. Hogan then will use to get
11 information. And he will contact family members, friends,
12 obviously you. The victim, I suppose, in this case as well
13 might be contacted. All of this information will be gathered
14 and put together in a report. It will also contain whatever
15 criminal history you might have, and this all gets put
16 together in a report.

17 That report in draft form will go to your attorney
18 and the attorney for the government, and you have a chance to
19 make objections. And objections can be factual, that may or
20 may not impact guidelines, or they can be legal, which almost
21 always impacts the guidelines. And so there's an informal
22 process of working that out, and at the end of the informal
23 process the probation officer can either accept the
24 objections, modify the report, or decline to accept them and
25 he will just note them, then.

1 At that point the report becomes finalized. It will
2 come to me. It will also go to your attorney and the attorney
3 for the government. And then at that point if there are any
4 remaining objections that need to be handled, we'll just
5 handle that at sentencing. And as part of the sentencing
6 process like I described, the guidelines have to be
7 calculated. As part of that, I will resolve any objections
8 one way or the other, and then we'll proceed to sentencing.

9 So all of that takes a little bit of time, as you
10 can guess. And so your sentencing in this matter will be
11 August 7 at 10 a.m. here in Missoula.

12 And so I believe, Brian, that I would calculate the
13 presentence report draft to be done by July 10? Does that
14 work for you?

15 PROBATION OFFICER HOGAN: Yes.

16 THE COURT: Okay.

17 All right. Any questions about that?

18 THE DEFENDANT: No.

19 MR. RHODES: Your Honor, I'm not positive but I
20 believe I'll be on vacation August 7, so I may be filing a
21 motion to reset the hearing.

22 THE COURT: I didn't know we were allowed vacations
23 anymore. I thought we were vacationing in our homes.

24 MR. RHODES: Yeah.

25 THE COURT: Okay. That's fine. Yeah, if that date,

1 if that date needs to be moved, it can certainly be moved.

2 MR. RHODES: Thank you.

3 And with regard to sentencing, Your Honor -- and we
4 would, of course, file a motion, but I anticipate requesting
5 that Mr. Nash be again permitted to appear via video
6 conference.

7 THE COURT: And as long as there's no objection from
8 the United States, that's fine with me.

9 MR. RHODES: Thank you, Your Honor.

10 THE COURT: All right.

11 Okay. And no problem with continued release, I
12 presume?

13 MR. WELDON: That's correct, Your Honor.

14 THE COURT: All right.

15 MR. WELDON: The only thing that we would ask is
16 that the standard conditions continue to apply, including no
17 contact with the victims that have been identified.

18 THE COURT: Yes.

19 So, Mr. Nash, all of the conditions that you -- that
20 I previously released you on?

21 THE DEFENDANT: (No response.)

22 THE COURT: Mr. Nash, are you still there?

23 THE DEFENDANT: Okay. Yes, Your Honor.

24 THE COURT: So all of those conditions remain in
25 full force and effect. So make sure that you abide by them

1 and we won't have any problems. Okay?

2 THE DEFENDANT: I will continue to do that. Thank
3 you, Your Honor.

4 THE COURT: All right. Thank you very much.
5 Anything else?

6 MR. RHODES: No, Your Honor. Thank you.

7 MR. WELDON: No, Your Honor. Thank you.

8 THE COURT: All right. We'll be in recess.

9 (Proceedings were concluded at 2:45 p.m.)
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TRANSCRIBER'S CERTIFICATE

I, JoAnn Jett Corson, certify that the foregoing transcript is an accurate transcription, to the best of my ability, from the digital audio recording of the proceedings given at the time and place hereinbefore mentioned; and that a certified copy of this transcript will be filed electronically with the Court.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys to this action, nor financially interested in this action.

IN WITNESS WHEREOF, I have set my hand at Missoula, Montana this 23rd day of November, 2021.

/s/ JoAnn Jett Corson

JoAnn Jett Corson
United States Court Reporter